

**PLANNING COMMISSION MINUTES OF SEPTEMBER 12, 2011**

- 2. FILE #:** 2011-7410  
**Location:** 725 Gail Ave. (APN: 211-09-064)  
**Proposed Project:** Appeal of a decision by the Director of Community Development approving a fence with conditions in the front yard. The property is located in an R-1 (Low Density Residential Development) Zoning District.  
**Environmental Review:** A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines  
**Staff Contact:** Steve Lynch, 408-730-2723,  
[slynch@ci.sunnyvale.ca.us](mailto:slynch@ci.sunnyvale.ca.us)

**Gerri Caruso**, Principal Planner, presented the staff report and noted that this is an appeal of a decision by the Director of Community Development approving a Miscellaneous Plan Permit to allow a fence 15' from the front property line. She noted that the applicant is asking for 10' setback from the front property line.

**Comm. Sulser** asked staff regarding the table on page three of six of the report which lists other fences along Gail Avenue with a "No" under the "Permit" column. Gerri Caruso, Principal Planner said that it meant that those particular homes do not have a recorded permit for the fence, as the street used to be in the County jurisdiction, and not in Sunnyvale. Comm. Sulser then asked if the fences are grandfathered. Mrs. Caruso replied no, and the City does not pursue fences except on a complaint basis. Mrs. Caruso referred to the table and stated that the table was to show some context of the neighborhood. Comm. Sulser asked for clarification regarding staff referring to the Eichler Design Guidelines for this permit although it is not an Eichler home. Mrs. Caruso affirmed, and said this home is not in an Eichler neighborhood nor is an Eichler home but staff felt that the Eichler Design Guidelines was their best guidance as the neighbor is similar to Eichler neighborhoods. Mrs. Caruso responded that, since the neighborhood closely resembles an Eichler neighborhood, with the fences similar to an Eichler neighborhood, staff used the Guidelines in this particular application.

**Vice Chair Larsson** asked staff if what other types guidelines besides the Eichler Design Guidelines can be applied to this proposal. Ms. Caruso noted that the Single Family Design Techniques and the Municipal Code would be other references and tools that staff can use; however, the Single Family Design Techniques are very limited with fences. She further noted that staff determined that more scrutiny was used because of the design of the neighborhood and that it is staff's opinion that the Eichler Design Guidelines were the most relative guide to use in this case.

**Chair Hendricks** clarified with staff that the Eichler Design Guidelines are being used because of the characteristic of the neighborhood is similar to an Eichler neighborhood. Ms. Caruso responded yes. Chair Hendricks further asked staff about the homes with unpermitted fences. Ms. Caruso said the City does not have staff and resources to look for unpermitted fences unless it is brought to their attention when a resident applies for a permit or when a complaint is filed to the City.

**Chair Hendricks opened the public hearing.**

**Yoju Kao**, appellant, stated that she was approved to build her fence fifteen feet from the property line and is asking for a ten-foot setback. She also said that she wants her fence to match with her neighbor's fences at 21 feet from the curb. Mrs. Kao presented pictures of other fences with different setbacks. Ms. Kao further stated that she is a longtime resident and a good citizen and is asking for a small adjustment of five feet, which is the same as her neighbors who do not have a permit.

**Vice Chair Larsson** noticed the fence posts during a site visit and asked if they were set back fifteen feet from the property line. Ms. Kao responded that the new fence posts are set ten feet from property line, twenty one feet from the curb like her neighbors.

**Chair Hendricks** asked what the height of the existing fence is. Ms. Kao responded that they are 8-feet tall and the new fence will be 6 feet. Chair Hendricks stated that she initially asked to install a fence at the end of her grass, and she was approved to install the fence at fifteen feet. Chair Hendricks further asked if she installed the new posts before or after she received the approval of fifteen feet. Ms. Kao responded that the new posts were installed before she received the letter for the fifteen-foot setback because her helper had already rented the machinery to install the posts. Ms. Kao further stated that she assumed it was okay to set the posts at ten feet because her neighbors' fence is at ten feet.

**Chair Hendricks** asked if there were any speakers. There were none. Chair Hendricks then asked if Ms. Kao had any additional comments.

**Ms. Kao** stated that she would like to see fairness because all of her neighbor's fences are set at ten feet from their property line. She further stated if she does not get approved for a ten foot setback, and that her neighbors should not have a ten foot setback if she cannot.

**Chair Hendricks** asked staff if the proposed six feet height for the new fence is measured from the grass or the curb. Ms. Caruso responded that the six foot height will be measured from the curb. Chair Hendricks further asked staff if they would have a different recommendation if the applicant initially asked for the ten foot setback. Ms. Caruso stated that they still would have used the Eichler Design Guidelines.

**Chair Hendricks closed the public hearing.**

**Vice Chair Larsson moved for Alternative 1, to deny the appeal and uphold the decision of the Director of Community Development to approve the Miscellaneous Plan Permit with conditions of approval. Comm. Sulser seconded the motion.**

**Vice Chair Larsson** said he applauds the applicant for the upgrades she made to her property; however, he agrees with staff that the Eichler Design Guidelines are appropriate for this neighborhood. He further stated that it is a shame neighbors have not applied for permits.

**Comm. Sulser** agrees with Vice Chair Larsson and noted that the Single Family Design Techniques are more stringent; however, the Eichler Design Guidelines are more appropriate for this application.

**Comm. Dohadwala** said she will be supporting the motion; however, it is unfortunate that Ms. Kao's neighbors have fences that are not in compliance while she applied for a permit and must adhere to the Conditions of Approval. She further noted that guidelines must be kept.

**Chair Hendricks** thanked Ms. Kao for applying for a permit. He noted that fairness is not the question on the table, but consistency and appropriateness is what the Council is attempting. He will not be supporting the motion because of appropriateness reasons. He noted that some homes are closer than fifteen feet to the street. He also noted that the Eichler Design Guidelines are specifically written and use the words guidelines. He stated that he will not be supporting the motion. He noted that the proposed fence will be lower than the current fence. He again stated that he will not be supporting the motion.

**ACTION: Vice Chair Larsson made a motion on 2011-7410 to deny the appeal and uphold the decision of the Director of Community Development to approve the Miscellaneous Plan Permit with conditions of approval. Comm. Sulser seconded. Motion carried 5-1, with Chair Hendricks dissenting, and Comm. Travis absent.**

**APPEAL OPTIONS: This action is final.**